

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

THE KROGER CO.,

Plaintiff,

v.

THE FEDERAL TRADE COMMISSION,
et al.,

Defendants.

No. 1:24-cv-00438-DRC
Hon. Douglas R. Cole

**DEFENDANTS' NOTICE OF CLARIFIED ADMINISTRATIVE LAW JUDGE
ORDER RECESSING PART 3 ADMINISTRATIVE PROCEEDING
UNTIL AT LEAST DECEMBER 18, 2024¹**

Defendants respectfully notify the Court that the Administrative Law Judge presiding over the Part 3 administrative proceeding at issue here has granted the underlying parties' joint motion and clarified the duration of the recess previously entered by the ALJ. The ALJ's September 30, 2024 Order ("ALJ Order") (attached as Ex. 1) provides that "the recess in the Part 3 administrative hearing, as well as all related pre-hearing deadlines, are **HEREBY CONTINUED** until 21 days after the final resolution of the federal proceeding [on the FTC's motion for preliminary injunction in the District of Oregon], and shall extend at least until December 18, 2024." ALJ Order at 2 (emphasis in original). Because the

¹ Defendants submit this notice without prejudice to their pending request for a stay, ECF No. 15, or their anticipated request that the Court separately adjourn further proceedings in this matter, including any motions hearing, pending the anticipated decision from the District of Oregon on the FTC's motion for preliminary injunction under 15 U.S.C. § 53(b). Stay or adjournment of this proceeding has been the subject of extensive discussions with counsel for Kroger, and Defendants intend to resume that meet-and-confer process in light of the ALJ's Order of September 30, 2024, in anticipation of promptly moving for an adjournment on the basis of that development.

ALJ has clarified that the underlying administrative proceeding shall remain recessed until “at least” December 18, 2024, the predicate set by this Court to continue any hearing on pending motions from October 4, 2024, to October 28, 2024, now exists. *See* Minute Order of Friday, September 27, 2024 (“If the ALJ agrees to the request [for clarification], the hearing will be moved to 10/28/24.”).

Dated: October 1, 2024

Respectfully submitted,

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